

Serial 17
Domestic Violence Amendment (Police Orders) Bill 2005
Dr Toyne

**A BILL
for
AN ACT**

to amend the *Domestic Violence Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA
DOMESTIC VIOLENCE AMENDMENT (POLICE ORDERS) ACT 2005

Act No. [] of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2005

AN ACT

to amend the *Domestic Violence Act*, and for related purposes

[Assented to [] 2005]
[Second reading [] 2005]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Domestic Violence Amendment (Police Orders) Act 2005*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act amended

This Act amends the *Domestic Violence Act*.

4. Amendment of section 3 (Interpretation)

Section 3(1), definition of "restraining order" –

omit, substitute

"restraining order" means –

- (a) an order made under section 4(1), 6(3) or 6A(3); or

- (b) an order referred to in paragraph (a) that is varied under Part 2,

and includes a registered interstate restraining order and registered New Zealand restraining order.

5. Amendment of section 4 (Restraining order made by Court or Clerk)

- (1) Section 4(5) –

omit

all the words after "should not be"

substitute

confirmed by the Court.

- (2) Section 4(6) and (7) –

omit

6. Repeal and substitution of section 6

Section 6 –

repeal, substitute

6. Restraining order made by magistrate

(1) If it is not practicable in particular circumstances to obtain from the Court or Clerk an order under section 4(1), a police officer may apply to a magistrate for an order under this section.

(2) The application may be made by telephone, facsimile or other form of electronic communication.

(3) Subject to subsections (5) and (6), the magistrate may make an order under this section in the same terms as an order the Court may make under section 4(1).

(4) The order may be made even though the defendant has not been given an opportunity to answer any allegation in the application.

- (5) The magistrate may make the order only if satisfied –

- (a) it is not practicable in the circumstances to obtain an order under section 4(1); and

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- (b) had the magistrate been sitting as the Court – the magistrate might reasonably have made an order under section 4(1).
- (6) In addition, before making or refusing to make an order of the type referred to in section 4(8), the magistrate must consider the effect of making or refusing to make the order on –
 - (a) the accommodation of the persons affected by the order; and
 - (b) any children of or in the care of the persons affected by the order.
- (7) The order has effect as if it were an order made under section 4(1).
- (8) The magistrate must record on the order the reasons for making it and the time and place for its return.
- (9) For subsection (8), the time for the return of the order must be as soon as practicable after its making.
- (10) The magistrate must inform the police officer of the terms of the order, the reasons for making it and the time and place for its return.
- (11) The police officer must –
 - (a) complete a form of order as directed by the magistrate and write on it the magistrate's name and the date and time it is made; and
 - (b) as soon as practicable after the form of order is completed –
 - (i) serve a copy of it on the defendant; and
 - (ii) send the original of it to the Clerk.
- (12) The form of order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the order should not be confirmed by the Court.

6A. Restraining order made by police officer

- (1) An authorised police officer may make an order under this section if satisfied –
 - (a) it is not practicable in the circumstances to obtain an order under section 4(1); and
 - (b) it is necessary to ensure the immediate safety of the person for whose protection the order is to be made; and
 - (c) the Court might reasonably have made an order under section 4(1).

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(2) In addition, before making or refusing to make an order of the type referred to in section 4(8), the police officer must consider the effect of making or refusing to make the order on –

- (a) the accommodation of the persons affected by the order; and
- (b) any children of or in the care of the persons affected by the order.

(3) The police officer may make the order in the same terms as an order the Court may make under section 4(1).

(4) The order may be made even though the defendant has not been given an opportunity to answer any allegation made in relation to the making of the order.

(5) The order has effect as if it were an order made under section 4(1).

(6) The police officer must record on the order the reasons for making it and the time and place for its return.

(7) For subsection (6), the time for the return of the order must be as soon as practicable after its making.

(8) As soon as practicable after the order is made, a police officer must –

- (a) serve a copy of it on the defendant; and
- (b) inform the defendant of the defendant's right to apply for a variation or revocation of the order under section 6B; and
- (c) send the original of the order to the Clerk.

(9) The order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on the order for its return, to show cause why the order should not be confirmed by the Court.

(10) In this section –

"authorised police officer" means –

- (a) a police officer of or above the rank of Senior Sergeant; or
- (b) the officer in charge for the time being of a police station.

6B. Review of order made by police officer

(1) This section applies to an order made under section 6A(3).

(2) The defendant may apply for a variation or revocation of the order.

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(3) If the defendant wants to apply for a variation or revocation of the order under subsection (2) –

(a) the defendant must inform a police officer; and

(b) the police officer must facilitate the application.

(4) Without limiting subsection (3)(b), the police officer must –

(a) contact a magistrate; and

(b) ensure the application complies with any rules or practice directions made or issued by the Chief Magistrate under section 20AB relating to the time and manner for making the application; and

(c) ensure the magistrate is given the information required for the application.

(5) The application may be made by telephone, facsimile or other form of electronic communication.

(6) The magistrate may decide to vary or revoke or refuse to vary or revoke the order.

(7) The magistrate must record the reasons for the decision and inform the police officer of the reasons.

(8) If the magistrate varies the order, the magistrate must also inform the police officer of the terms of the order as varied and the time and place for the return of the order as varied.

(9) If the magistrate varies or revokes the order, the police officer must –

(a) complete a form of order as directed by the magistrate and write on it the magistrate's name and the date and time it is made; and

(b) as soon as practicable after the form of order is completed –

(i) serve a copy of it on the parties; and

(ii) send the original of it to the Clerk.

(10) If the magistrate varies the order, the form of order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the order as varied should not be confirmed by the Court.

(11) If the magistrate refuses to vary or revoke the order, the police officer must inform the defendant of the decision and the reasons for it.

7. Amendment of section 7 (Power to remove and detain while order sought)

(1) Section 7(1), after "order under section 6" –

insert

or make an order under section 6A

(2) Section 7(1), after "application under section 6" –

insert

or an order under section 6A

8. Amendment of section 8 (Variation or revocation of order)

Section 8(4), after "section 4 or 6(1)" –

insert

or on whose behalf an order is made under section 6A(3)

9. Amendment of section 8A (Variation of order by telephone)

Section 8A(8) to (10) –

omit

10. Amendment of section 8B (Variation of order ex parte in special circumstances)

Section 8B(10) to (12) –

omit

11. New section 8C

After section 8B –

insert

8C. Confirmation of order

(1) This section applies if a defendant is summoned under section 4(5), 6(12), 6A(9), 6B(10), 8A(7) or 8B(8) to appear before the Court to show cause why a restraining order or variation of a restraining order should not be confirmed.

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(2) Subject to section 20AC, the person on whose behalf the order is made may appear at the hearing.

(3) If the defendant has been summoned under section 6(12) or 6A(9), a police officer or representative of the Police Force must appear at the hearing.

(4) At the hearing, the Court may confirm, vary or revoke the order.

(5) However, the Court must not confirm the order unless –

(a) it is satisfied the defendant has been served with a copy of the order in accordance with section 10(2); and

(b) it has considered any evidence before it and submissions from the parties.

(6) As soon as practicable after the Court makes its decision, the Clerk must serve a copy of the order recording the decision on the defendant.

12. Amendment of section 10 (Breach of order)

After section 10(1A) –

insert

(1AB) However, subsection (1A) does not apply to an order made under section 6A unless the order has been confirmed by the Court under section 8C.

13. Repeal and substitution of section 20AF

Section 20AF –

repeal, substitute

20AF. Family law orders

(1) A person applying for a restraining order or to vary or revoke a restraining order must inform the Court, magistrate or Clerk to whom the application is made of any family law orders that the person knows to be in force in relation to the defendant.

(2) Subsections (3) and (4) apply if a police officer intends to –

(a) apply to a magistrate for a restraining order or to vary or revoke a restraining order; or

(b) make a restraining order under section 6A(3).

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(3) The police officer must make reasonable inquiries regarding the existence or otherwise of any family law orders in force in relation to the defendant.

(4) When requested to do so, a person must inform the police officer of any family law orders that the person knows to be in force in relation to the defendant.

(5) An action of the Court, magistrate, Clerk or police officer is not invalid merely because of the failure of a person to provide information in accordance with subsection (1) or (4).

(6) In this section –

"family law order" means a contact order within the meaning of Part VII, Division 11 of the *Family Law Act* (Cth).

14. Repeal

The *Domestic Violence Amendment Act 2001* (Act No. 30 of 2001) is repealed.
